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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DELPHINE ALLEN, et al.,)
Plaintiffs,) No. 00-cv-04599 WHO
vs.)
CITY OF OAKLAND, et al.,) **JOINT CASE MANAGEMENT
STATEMENT**
Defendants.)
Date: February 25, 2020
Time: 3:30 p.m.
Place: Dept. 2 – 17th Floor
450 Golden Gate Ave.
San Francisco, CA 94102
The Hon. William H. Orrick

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TABLE OF CONTENTS

PLAINTIFFS' STATEMENT

3	TASK 2 (Timeliness Standards and Compliance with IAD Investigations)	1
4	TASK 5 (Complaint Procedures for IAD)	3
5	TASK 24 (Use of Force Reporting Policy) & 25 (Use of Force Investigations	
6	and Report Responsibility)	5
7	TASK 26 (Force Review Boards) & 30 (Executive Force Review Board)	9
8	TASK 34 (Stop Data/Vehicle Stops, Field Investigations and Detentions)	11
9	TASK 34 (Stop Data/Vehicle Stops, Field Investigations and Detentions)	11
10	TASK 45 (Consistency of Discipline Policy)	13
11	CONCLUSION.....	15

THE CITY'S STATEMENT

14	OVERVIEW	18
15	THE CITY'S EFFORTS TO REDUCE RACIAL DISPARITIES	18
16	I. STOPS AND DISPARITIES ARE DECLINING	19
17	II. THE DEPARTMENT HAS A NEW RISK MANAGEMENT SYSTEM	24
18	III. THE DEPARTMENT'S BEAT INTEGRITY PROGRAM IS PROMISING	24
19	IV. THE DEPARTMENT IS STUDYING DISPARITIES IN DISCIPLINE	27
20	V. THE DEPARTMENT IS WORKING TO INCREASE DIVERSITY	28
21	A. Department Demographics	28
22	B. Background and Recruitment Improvements	29
23	C. Incoming Demographics	30
24	VI. THE DEPARTMENT CONTINUES ITS WORK WITH STANFORD	31
25	VII. GENERAL ORDER R-02	31
26	TASK 2—INTERNAL AFFAIRS TIMELINES	32
27	TASK 5—INTERNAL AFFAIRS COMPLAINT PROCEDURES	35
28	JOINT CASE MANAGEMENT STATEMENT (C 00-04599 WHO)	

1	TASK 20—SPAN OF CONTROL	36
2	TASKS 24/25—FORCE INVESTIGATION AND REPORTING	37
3	I. THE DEPARTMENT DRILLED DOWN ON SEVENTEEN CASES	
4	FROM THE OIG's <i>SPECIAL REPORT</i>	37
5	II. THE DEPARTMENT, THE POLICE COMMISSION, AND THE COMMUNITY	
6	ARE COLLOBORATING TO UPDATE POLICY	39
7	III. THE DEPARTMENT IS CAPTURING MORE FORCE	40
8	IV. THERE IS NO APPARENT UPTICK IN ACTUAL OR	
9	UNREASONABLE FORCE	41
10	IV. THE DEPARTMENT IS ADDRESSING BODY-CAMERA ACTIVATION	
11	CONCERNS	41
12	TASK 26—FORCE REVIEW BOARDS	42
13	TASK 30—EXECUTIVE FORCE REVIEW BOARDS	44
14	TASK 34—STOP DATA	45
15	TASK 41—RISK MANAGEMENT	45
16	TASK 45—CONSISTENCY OF DISCIPLINE POLICY	47
17	VEHICLE PURSUITS	47
18	CONCLUSION	48
19		

THE OPOA'S STATEMENT

21	THE OPOA'S STATEMENT	49
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PLAINTIFFS' STATEMENT

PLAINTIFF'S CURRENT POSITION

3 In Plaintiffs' most recent Case Management Conference Statement to this
4 Court, we stated that "it is clear that OPD has regressed on multiple fronts, and
5 across several NSA tasks, in the past year." (Docket 1303, Joint Case Management
6 Conference Statement, p. 5) Unfortunately, the Department has been unable to
7 reverse this downward trend over the last six months since the last Case Management
8 Conference. In fact, OPD has gone out of compliance with yet another task (Task 26
9 Force Review Board) since the last Case Management Conference in August, 2019.

10 OPD is currently out of full compliance with eight tasks. The current list of out
11 of compliance tasks is: 1. Task 2 (Timeliness Standards and Compliance with IAD
12 Investigations); 2. Task 5 (Internal Affairs Division (IAD) Complaint Procedures – in
13 partial compliance); 3. Task 24 (Use of Force Reporting Policy); 4. Task 25 (Use of
14 Force Investigations and Report Responsibility); 5. Task 26 (Force Review Board), 6.
15 Task 30 (Executive Force Review Board—out of compliance); 7. Task 34 (Stop Data –
16 in partial compliance), and 8. Task 45 (Consistency of Discipline – in partial
17 compliance). Five of these tasks (Tasks 2, 24, 25, 26, and 30) were in full compliance
18 as recently as January of 2019.

19 Plaintiffs' will outline their concerns regarding specific NSA tasks, below:

Task 2 (Timeliness Standards and Compliance with IAD Investigations)

22 Task 2 requires that the Internal Affairs Department of the OPD complete
23 internal investigations in a timely manner, and had been inactive between 2015 and
24 2019. However, the 62nd IMT report determined that “IAD is having difficulty meeting
25 its required timeliness standards”, and OPD was found no longer in compliance with
26 this task. (62nd IMT Report, p. 2)

1 Immediately prior to the most recent Case Management Conference before this
 2 Court, Plaintiff's received an email (dated August 12, 2019) from Chief Kirkpatrick
 3 stating that "we do not have a backlog anymore in IA." This email was incorporated in
 4 Plaintiffs' CMC statement, and Plaintiffs' took the statement at face value. Plaintiffs
 5 noted, in closing, that we "hope that the City will address why this backlog was
 6 created in light of the City's agreement to abide by Task 2 and what permanent steps
 7 will be taken going forward to comply with Task 2 in the future." (August 2019 CMC
 8 Statement, page 3)

9 The most recent (66th) IMT Report notes that, contrary to Chief Kirkpatrick's
 10 assertions above, OPD remains unable to complete internal investigations at the IAD
 11 and Division Level in accordance with the very timeliness standards established by
 12 OPD. For example, OPD policy requires that "at least 85% of Class I misconduct
 13 investigations and at least 85% of Class II misconduct investigations must be
 14 completed within 180 days to be considered timely." Per DGO M-03, Class I offenses
 15 "are the most serious allegations of misconduct and, if sustained, shall result in
 16 disciplinary action up to and including dismissal and may serve as the basis for
 17 criminal prosecution."

18 The IMT reviewed 42 Class I misconduct cases during the period covered by the
 19 Draft 66th Report, and determined that only 16 of these cases were completed in a
 20 timely manner. This represents a paltry 38% timely-completion rate that is, per the
 21 IMT, "still *far below compliance*." (IMT's emphasis, Draft 66th IMT Report, page 3)

22 Similarly, of the 85 Class II cases reviewed by the IMT during the period
 23 covered by the 66th Draft IMT Report, only 56 were in compliance with established
 24 timelines. This represents a 66% compliance rate with IAD policy and is, once again
 25 per the IMT, *far below compliance*." (IMT's emphasis, Draft 66th IMT Report, page 3)

26 It is clear that OPD is nowhere near achieving compliance with this task.
 27 Plaintiffs are baffled by IAD's inability to complete investigations within the 180-day
 28

1 time limit. There is no reasonable explanation for these abysmal IA completion rates,
 2 particularly when the OPD was in compliance with this task for so long that it became
 3 inactive for four years.

4 The failure of OPD to comply with the 180 Day requirement is particularly
 5 distressing to Plaintiffs' counsel. The first monitoring team insisted on a 90-day
 6 requirement and opposed the OPD request for a 180-day timeline. Plaintiffs sided
 7 with the Oakland Police Department and against the Monitor at that time causing
 8 problems in our relationship with them that lasted for some weeks. The OPD got their
 9 180-day deadline. Now, some 12-15 years later, they are still unable to meet their own
 10 deadline. Obviously, this is completely unacceptable.

11

12 **Task 5 (Complaint Procedures for IAD)**

13 OPD had been in partial compliance with Task 5, which pertains to Complaint
 14 Procedures for the Internal Affairs Division, since the 21st Reporting Period (May
 15 2015). On March 23, 2016, the Court issued an Order indicating that irregularities
 16 and potential violations of the NSA occurred in IAD investigation 15-0771. The Order
 17 noted that the investigation raised issues of accountability and sustainability of
 18 compliance. The IMT's most recently assessed this task in the 64th IMT Report,
 19 published on October 10/25/2019. This report deferred Task 5 compliance "based on
 20 the provisions of the March 23, 2016 Order, our general concerns, and the findings of
 21 our forthcoming analysis of the Department's investigation of the officer-involved
 22 shooting of March 11, 2018". (64th IMT Report, p. 9).

23 The OPD is in compliance with some sub-paragraphs of Task 5, including
 24 subtasks 5.1 to 5.5, and subtasks 5.6 to 5.12. However, The IMT's concerns centered on
 25 Task 5.18 (which requires that OPD resolve each allegation in a complaint
 26 investigation using the preponderance of the evidence standard) and Task 5.19 (which
 27 requires that each allegation of a complaint is identified and resolved with one of the
 28

1 following dispositions: unfounded; sustained; exonerated; not sustained; or
 2 administrative closure). The IMT reviewed 25 such cases, and expressed reservations
 3 about two of the cases.

4 In the first instance, the IMT determined that “a potential use of force
 5 warranted further investigation.” In this case, officers struggled with a DUI arrestee,
 6 and the investigator “noted the struggle”, but determined it “was unclear if any force
 7 was used against the complainant.” (64th IMT Report, p. 8). Although the IMT
 8 concluded that the investigator’s approval for a summary finding was “probably
 9 appropriate... the investigator and/or IAD reviewers should have realized that the
 10 discovered use of force should have been investigated.” (64th IMT Report, p. 9)

11 The IMT also disagreed with the findings in a second case, where an officer was
 12 sustained for two of three allegations, which resulted in the officer’s termination. The
 13 IMT writes that “we believe the remaining allegation should have been sustained, as
 14 well.” (64th IMT Report, p. 9). Plaintiffs’ are not privy to the details of this case, but
 15 the discrepancies in the assessments of the IAD investigators and the IMT fit an
 16 ongoing pattern that hinder the Department’s ability to come into compliance with
 17 this all-important Task.

18 Finally, Plaintiffs note that OPD would be better-positioned to attain
 19 meaningful and sustainable compliance with this Task if the City of Oakland had
 20 functional relationship with the new Oakland Police Commission, which will be the
 21 ultimate arbiter on most complaints against Oakland Police Department personnel.
 22 However, to date, the working relationship between the Oakland Police Department,
 23 the City Administrator’s Office, the City Attorney’s Office, and the Police Commission
 24 has been difficult at best, and overtly hostile at other times. This dynamic is not
 25 sustainable if OPD wishes to attain compliance with Task 5, and Plaintiffs’ encourage
 26 the Department to pursue a more collaborative relationship with other stakeholders in
 27 this process.

1

2 Tasks 24 (Use of Force Reporting Policy) & 25 (Use of Force Investigations and Report
3 Responsibility)

4 OPD had been in compliance with Tasks 24 (Use of Force Reporting Policy) and
5 25 (Use of Force Investigations and Report Responsibility) of the NSA since 2015. In
6 November 2018, this Court reactivated these Tasks as a result of Plaintiffs' and the
7 Monitoring Team's concerns about Use of Force Reporting procedures at OPD.

8 Plaintiffs' have also elaborated their concerns in this regard at great length
9 previously. Oakland reported that use of force levels had decreased for years, and
10 Department and City leadership stated publicly that this represented real and lasting
11 cultural change within the Department. Per the 56th IMT report, uses of force data
12 between 2012 and 2017 dropped 75%, and as of October 6, 2018, reported force data
13 indicated an additional decrease of 23%. However, when published use of force rates
14 skyrocketed in late 2018, Plaintiffs' attorneys reported to this Court that Use of Force
15 incidents had, apparently, been systematically underreported for years, in a manner
16 incongruent with the Department's own written policies, and demanded that a
17 comprehensive investigation must be undertaken to identify the root causes of this
18 problem. (November 16, 2018 Case Management Statement, Dkt. No. 1221).

19 More recent IMT Reports suggested there were other recent Uses of Force that
20 were not reported besides the pointing of a firearm at a person. For example, the 57th
21 IMT report highlighted a number of cases where "it is unclear whether force was used
22 and/or there is no actual video of the arrest" (page 2, 57th IMT Report). On November
23 14, 2018, the IMT provided follow-up information regarding the 57th IMT Report to
24 Plaintiffs' attorneys, the Chief of Police, and the City of Oakland which indicated that
25 they reviewed over one hundred (100) police reports. The IMT subsequently requested
26 body camera footage for 38 selected videos containing possible charges (such as assault
27 on an officer, obstructing, resisting arrest, etc.) that had no accompanying use of force
28

1 report. After reviewing the videos, the IMT determined that in 14 cases that were
 2 reviewed, officers used force without completing a use of force report. Six of those
 3 incidents involved the use/pointing of a service weapon, and eight others contained
 4 force other than the pointing of a firearm. This means that more than half of the
 5 unreported Use of Force incidents that the IMT recently discovered could not be
 6 attributable in any way to confusion about the wording regarding the low
 7 ready/retention position in General Order K-4.

8 In July 2019, just prior to the most recent Case Management Conference in this
 9 case, OIG (Office of Inspector General) released a damning report that indicated
 10 officers' systematically under-reported use of force incidents.¹ Specifically, uses of
 11 force involving weaponless defense techniques and pointing of a firearm at a subject
 12 were not always being reported in accordance with Department policy and procedures.
 13 (OIG Report, p.2).

14 The OIG Audit identified five incidents of unreported weaponless defense
 15 techniques (i.e., hand/palm/elbow strikes; kicks; take-downs; leg sweeps; arm-bar
 16 takedown; and control holds such as escort via elbow, bent wrist, twist lock, and arm-
 17 bar hammerlock). One incident involved a takedown of a handcuffed subject, which
 18 was considered a Level 3 use of force but, per policy, should have been investigated as
 19 a Level 2 use of force, requiring review by the Force Review Board (FRB). Further, no
 20 use of force was even reported by the subject officer. The OIG audit also found four
 21 other incidents where Level 3 Uses of Force were unreported. The most recent IMT
 22 report (66th IMT report) notes further instances where the IMT noted failures in the
 23 FRB process, and those are discussed in greater length below, at Task 26.

24 When the OIG Report was published last summer, Plaintiffs' were especially
 25 alarmed by OIG's determination that "the percentage of African American subjects of
 26 force that went unreported is higher than the percentage of African American

27
 28 ¹ <http://www2.oaklandnet.com/oakcal/groups/police/documents/report/oak072446.pdf>
 JOINT CASE MANAGEMENT STATEMENT (C 00-04599 WHO)

1 arrestees.” (p. 2, OIG Audit) Of the five above-described incidents where reportable
 2 uses of force were not reported, four of the subjects of force (80%) were African
 3 American, and the other (20%) was Hispanic. Similarly, there were 19 incidents
 4 where OPD Officers did not report pointing their firearms at a subject, even though
 5 OPD policy mandates that this is a reportable Use of Force. 17 of these 19 incidents
 6 (89%) involved an African-American subject, while the other two (11%) involved
 7 Hispanic subjects. (OIG Report, p. 15).

8 As we noted at the time, this means that in every instance where the OIG Audit
 9 determined that officers did not properly report Use of Force, the subject of the
 10 unreported force was either Hispanic or African American. This finding cries out for a
 11 comprehensive study, but the silence from the OPD has been deafening. Chief
 12 Kirkpatrick, in her response to the OIG report, claimed that OPD “officers’ patience
 13 and professionalism in their community interactions reflect the cultural change within
 14 the Department.” (Kirkpatrick Response, p. 2) It is unfathomable that anybody,
 15 especially the Chief, could describe the OIG’s findings in this regard as evidence of
 16 positive “cultural change” or progress.

17 The City of Oakland, in its most recent Case Management Conference,
 18 concluded:

19
 20 “Lastly, in the very small sample size – too small to draw
 21 any statistical conclusions – the percentage of African
 22 Americans who were arrested was lower than the
 23 percentage of underreported force against African
 24 Americans.” (August 2019 CMC Statement, page 22).

25 The suggestion that some Oakland Police are failing to file Use of Force Reports
 26 on the basis of race demands further investigation. Has OPD made any effort to see if
 27 this “small sample size” is accurate when compared with a larger sample, and thus
 28 reflects a major problem beyond the mere failure to report the Use of Force? If so,
 what does OPD plan on doing about it? These questions have apparently failed to be

1 answered since this allegedly small sample size was reported some six months ago. If
 2 so, the apparent lack of follow through from the OPD on this finding is a big part of
 3 the reason why the Oakland Police Department is still not in compliance with the
 4 Negotiated Settlement Agreement.

5 The IMT's most recently published review of use Level 3 and 4 uses of force did
 6 not find any incidents where such uses of force were inappropriate. (65th IMT Report,
 7 page 3) However, such uses of force continue to disproportionately impact minority
 8 citizens in Oakland. The IMT reviewed all Level 3 and Level 4 uses of force in
 9 February and March of 2019 and determined the racial breakdown for said uses of
 10 force was 52% African American, 24% Latino, 14% White, and 10% Asian or other.
 11 (65th IMT Report, page 3) These figures are generally consistent with earlier IMT
 12 reviews. Minority citizens in Oakland continue to face disproportionate rates of force
 13 usage compared to non-minority Oaklanders, and this remains unacceptable to
 14 Plaintiffs.

15 Even if such force is "within policy", the Oakland Police Department needs to
 16 examine if the same force is used equally in the white and African American
 17 communities. The work of Doctor Jennifer Eberhardt has already found that
 18 handcuffing is used on African Americans more than Whites in analogous situations.
 19 She has also found that some OPD officers talk to African Americans differently than
 20 they talk to Caucasians. Given these findings, the possibility that force is also used on
 21 African Americans when it is not used on Caucasians in analogous situations is not a
 22 remote possibility.

23 Finally, upon review of Level 3 and 4 uses of force in February and March of
 24 2019 (the most recent data covered in a published IMT Report, in this case the 65th
 25 IMT Report), the IMT identified incidents where "additional verbal communications
 26 and explanation with persons... might result in a reduction in the need to use physical
 27 force", and other incidents "where OPD failed to identify themselves as police officers

1 when contacting subjects.” (65th IMT Report, page 3). The IMT’s review of Level 2
 2 uses of force during this period also found two instances where “additional uses of
 3 force had been used and not reported.” These are addressed in great detail at Task 26,
 4 below.

5

6 Tasks 26 (Force Review Boards) and 30 (Executive Force Review Board)

7 Force Review Boards (FRBs) are convened to examine and review Level 2 uses
 8 of force. OPD was previously in compliance with this Task as recently as the 19th IMT
 9 Report. During the period covered by 65th IMT report, the IMT reviewed six FRB
 10 reports, and disagreed with the Board in one of the FRBs they observed, where a
 11 specialty impact munition (colloquially known as a bean-bag) was fired at an
 12 individual holding a stick. Prior to the officers’ arrival, the subject had used the stick
 13 and struck some innocent bystanders but he was standing alone, holding the stick in a
 14 non-threatening manner, when the officers arrived. The officers who initially
 15 responded to the scene deduced that said individual was suffering from mental illness,
 16 and had made some progress in establishing a rapport with him. According to the
 17 Body-worn camera (BWC) footage reviewed by the IMT, “the subject was not an
 18 immediate threat to anyone, including the officers on scene, all of whom appeared
 19 relaxed and almost nonchalant.” (65th IMT Report, p. 13) Another officer then arrived
 20 at the scene and “began giving commands to the subject as soon as he approached him,
 21 and fired the bean bag round less than one minute-and-a-half later.” (65th IMT Report,
 22 p. 13)

23 According to the IMT, FRB members “appropriately expressed concerns
 24 regarding the rapidity with which the officer deployed the round so soon after his
 25 arrival, and... noted that the subject was contained and they questioned the urgency
 26 to use force.” (65th IMT Report, p. 13) The FRB also expressed concerns regarding
 27 scene supervision. However, the Board subsequently found the supervisor out of
 28

1 compliance, but the shooter in compliance. Plaintiffs' note that sequence of events is
 2 similar the Pawlik shooting in March 2018, and the IMT describes this as "as scenario
 3 we have seen play out before [where] the Board was highly critical of the actions of a
 4 supervisor and an officer in this case; yet the Board members did not take their own
 5 concerns in account when determining the appropriateness of the force. They all
 6 questioned the timing of the use of force – in essence, they questioned the *need* for the
 7 force to be used when it was used – but they lacked the will to act on their concerns if
 8 it meant determining a use of force out of compliance." (65th IMT Report, p. 14) The
 9 FRB's own report on this incident concedes that "although the Board ultimately found
 10 the SIM deployment in compliance, there was extensive discussion regarding how the
 11 situation could have been better handled. The Chair expressed the need for the
 12 Department to do a better job in training officers and supervisors to bringing events
 13 like these to a conclusion." (65th IMT Report, p. 14)

14 Once again, the IMT and the OPD have made starkly divergent determinations
 15 about a use of force incident. Given the description of the FRB articulated by the IMT
 16 report, Plaintiffs' cannot understand why the above-described use of a bean bag round
 17 by the self-deployed officer was deemed appropriate or reasonable. The subject matter
 18 expert (SME) who testified before the FRB described this use of force as "anticipatory",
 19 but OPD's use of force policy does not prescribe or allow for "anticipatory" uses of force.
 20 The City of Oakland nevertheless submitted a response to the IMT's 65th Report with
 21 this Court (Document 1348), which stated that Chief Kirkpatrick asked two outside
 22 SMEs to review the case, and "both experts found that the use of force complied with
 23 the law and Department policy." (Document 1348, City of Oakland's Response to
 24 Independent Monitor's Sixty-fifth Report, p. 3) The City concludes that "reasonable
 25 minds will sometimes differ" on such matters (Document 1348, City of Oakland's
 26 Response to Independent Monitor's Sixty-fifth Report, p. 4).

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JOINT CASE MANAGEMENT STATEMENT (C 00-04599 WHO)

1 In fact, OPD is once again at odds with the IMT and Compliance Director when
 2 it comes to reviewing and assessing Use of Force incidents. Task 30, which covers
 3 Executive Force Review Boards (EFRBs), has not been specifically assessed by the
 4 IMT since the most recent Case Management Conference in front of this Court. It is
 5 clear, however, that OPD is out of compliance for this Task for many of the same
 6 reasons as Task 26. OPD was found to no longer be in compliance with Task 30 March
 7 2019, after being in compliance since 2014, for reasons pertaining to the Executive
 8 Force Review Board in the Pawlik matter. Chief Kirkpatrick was overruled by the
 9 Oakland Police Commission, the civilian-led body that is tasked with overseeing the
 10 Oakland Police Department. As this Court knows, the Discipline Committee (which
 11 consists of Commission Chair Regina Jackson, Commissioner Jose Dorado, and
 12 Commissioner Edwin Prather, two of whom were appointed directly by Mayor Schaaf
 13 and are not community appointees) of the Oakland Police Commission previously
 14 reviewed the circumstances of the Pawlik matter and sustained *MOR 370.27 – 1f Use*
 15 *of Physical Force* violations against four officers and one sergeant, and concluded that
 16 termination was the appropriate discipline for each of these officers.

17 This dovetails with the FRB described by the IMT, above, insofar as
 18 independent outside entities disagreed vehemently with OPD's conclusions following
 19 its review of a Use of Force incident. The Pawlik matter represented the first time that
 20 both the Compliance Director and the Police Commission overruled any OPD Chief on
 21 a discipline matter. Given the IMT's deep reservations about the Force Review Board
 22 related to the above-described beanbag incident, as articulated by the IMT in the 65th
 23 Report, it appears unlikely to be the last.

24

25 Task 34 (Stop Data/Vehicle Stops, Field Investigations and Detentions)

26 No report on the OPD can be complete without mentioning the significant
 27 decline in Discretionary Stops of African Americans between 2017 and 2018. In 2017,
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1 there were 19,185 discretionary stops of African Americans, and in 2018 there were
 2 10,874 stops of African Americans. This decrease was accomplished with no
 3 compromise to officer safety and no causal increase in crime. The Oakland Police
 4 Department deserves congratulations for this significant accomplishment.

5 The Risk Management Meetings are undoubtedly a major factor in causing this
 6 sharp decline. Officers with significant numbers of stops of African Americans, with
 7 no yield or justification for the stop, are identified and discussed. If warranted, these
 8 officers are placed on supervisory monitoring or intervention. This process serves as a
 9 message to the rank and file—the Oakland Police Department will no longer tolerate
 10 stops of African Americans unless there is a justification for the stop.

11 The Risk Management Meetings still need improvement. Sergeants are
 12 occasionally discussed, but not with the same thoroughness as the officers under their
 13 command. Even though there is follow through with “deliverables”, officers are rarely,
 14 if ever, subjected to a transfer or desk job assignments even when their names come
 15 up month after month in Risk Management Meetings. That is not to say there is a
 16 total absence of follow through. Squads are occasionally broken up by the more
 17 proactive Area Captains. However, identifying problem officers is often an end in
 18 itself, and effective follow through does not always happen.

19 The study on the failure to report use of force found some significant correlation
 20 between officers who failed to report force and officers who were identified as outliers
 21 in Risk Management Meetings discussing stop data issues. It is possible that there
 22 was some follow through when the same officers appeared as outliers in failure to
 23 report use of force and outliers in stop data. If so, plaintiffs’ attorneys would
 24 appreciate the court and the plaintiff attorneys being informed as to what, if any,
 25 action has been taken.

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JOINT CASE MANAGEMENT STATEMENT (C 00-04599 WHO)

1 Task 45 (Consistency of Discipline Policy)

2 The 66th IMT Report found that the OPD remained in partial compliance with
 3 Task 45. It is hard to believe that OPD will be in compliance with this task in the
 4 near future, following the publication of the Hillard Heintze report which will have
 5 remained in “draft form” for nearly six months without being finalized, and without
 6 the OPD taking any reported steps to remedy its extremely negative findings.

7 Plaintiffs’ attorneys anticipate that they will be criticized for discussing a report
 8 that is only in “draft” form. Yet the essential findings of the report have not changed
 9 for nearly six months. And the alternative to Plaintiffs’ attorneys speaking out would
 10 be to acquiesce to the current discipline process when we are on notice that the OPD
 11 discipline process is racially biased. Plaintiffs’ attorneys are simply unable to be silent
 12 under those circumstances.

13 Both drafts of the Hillard Heintze report have been consistent in their central
 14 finding that “black sworn employees were more likely to have their allegations result
 15 in a sustained finding than other employees.” Specifically they found that “over the
 16 five-year time period, black employees were 37% more likely to have an allegation
 17 against them result in a sustained finding.” (Hillard Heintze Draft Report, p. 10). The
 18 report also concluded that for Class One complaints (the most serious complaints),
 19 black individuals are almost 38% more likely to have the complaint sustained, while
 20 controlling for gender and years of service.” (Hillard Heintze Draft Report, p. 10)

21 The report also found that the IAD policy which allows sergeants to be “fact
 22 finders and adjudicators has the potential to lessen an investigator’s neutrality” and
 23 that this system “is not consistent with promising practices used in departments
 24 similar in size to Oakland.” (Hillard Heintze Draft Report, p. 11) Another troubling
 25 finding was that many (police officer) “interviewees ...indicated that they believe that
 26 the OPD receives few formal complaints about the disciplinary process because those
 27 who complain may be ostracized or not receive desired assignments”. The report also
 28

1 found that “Field Sergeants receive very little training on how to conduct those
 2 investigations that are assigned to them.” (Hillard Heintze Draft Report, p. 36)

3 The Report also investigated releases from the Academy. These findings were
 4 more couched with possible issues with their conclusions than were their findings on
 5 discipline in general. For example, while the report concluded that black individuals
 6 were more likely to be released from the academy as opposed to other individuals of
 7 another race, they also stated that:

8 “While twice as many black trainees were released than
 9 white or Hispanic trainees, our review of the files
 10 associated with the releases indicated that on a surface
 11 level, the releases seemed to be appropriate. However, no
 12 information was available to indicate whether other
 13 trainees may have exhibited the same behavior but were
 14 treated differently.” (Hillard Heintze Draft Report, p. 41)

15 The Report also looked at FTO (Field Officer Training) completion rates by race
 16 and gender. They included a table that shows completion rates for black and Asian
 17 trainees lagged behind those for Hispanic and white trainees.” (Hillard Heintze Draft
 18 Report, p. 42)

19 One of the reports’ conclusions was that “our analyses also revealed that the
 20 disparity between the sustaining of complaints against black officers and officers of
 21 other races “revealed that this disparity was reduced over the last two years as OPD
 22 improved its policies and processes.” (Hillard Heintze Draft Report, p. 62)
 23 Unfortunately, the report did not quantify this conclusion, nor did they say what
 24 “policies and processes” had caused this disparity to be reduced.

25 The Report had a series of recommendations that it urged the OPD to adopt.
 26 Although these recommendations were known to the OPD command staff for over six
 27 months as of the date of this Case Management Conference, it is unclear which
 28 recommendations, if any, have been adopted and/or implemented.

1 Hillard Heintze's findings – which include a "Key Finding" that "allegations
 2 that result in a sustained finding are more likely for black employees" (Hillard Heintze
 3 Draft Report, p. 10) – is an obvious violation of Task 45 which requires Consistency of
 4 Discipline. It is unfathomable to plaintiffs' attorneys that OPD can be anywhere near
 5 compliance with Task 45, which mandates that "discipline is imposed in a fair and
 6 consistent manner." If OPD fails to take appropriate action to resolve this disparity
 7 without delay, the Compliance Officer and the Court need to do it for them.

8

9

CONCLUSION

10 The Oakland Police Department recently gave a report to the Public Safety
 11 Committee of the City Council. The report included an "Attachment A" which
 12 contained graphs showing "All Use of Force Complaints 2008-2018", "Demeanor
 13 Complaints 2008-2018", and "Pursuits 2012-2018". All three graphs showed steep
 14 declines from 2008-2014 and increases thereafter. In the case of pursuits, the
 15 numbers rose sharply from 2017-2018.

16 These figures, like the relentless rise in the number of tasks out of compliance,
 17 show that the Oakland Police Department is moving in the wrong direction. After
 18 seventeen years of the Negotiated Settlement Agreement, this can no longer be
 19 tolerated. Indeed, the underlying fault line of race which precipitated this action
 20 twenty years ago, and which the consent decree has sought to address for seventeen
 21 years, persists.

22 Plaintiffs' attorneys note the issue of race pervades the problems OPD has with
 23 a number Tasks still not in compliance: Task 24 (Use of Force Reporting Policy), Task
 24 25 (Use of Force Investigations and Report Responsibility), Task 34 (Stop Data – in
 25 partial compliance), and Task 45 (Consistency of Discipline – in partial compliance) in
 26 particular have significant problems related to race. While OPD has made some
 27 significant progress on these issues, it is clear much work remains to be done. The
 28

1 continuation of this problem after so many years is particularly disappointing to
 2 Plaintiffs' attorneys, given that the Riders case itself contained so many issues related
 3 to race.

4 There is no doubt that the OPD has improved over the life of the Negotiated
 5 Settlement Agreement. There are many fine officers in the Oakland Police
 6 Department. They have a difficult job to do, and most of them do it very well.
 7 Moreover, officer-involved shootings and stops of African Americans and Latinos have
 8 seen significant drops since the beginning of the NSA.

9 The central problem seems to be at the top. There are a relatively small group
 10 of officers causing most of the problems. In many cases, they have been identified.
 11 However, not enough has
 12 been done to effectively supervise and discipline them. Something has to be done by
 13 the Monitor/Compliance Officer to bring this and related problems to an end and get
 14 the Oakland Police Department into compliance with the Negotiated Settlement
 15 Agreement.

16 In 2012, Plaintiffs' attorneys filed a motion to put the Oakland Police
 17 Department in receivership. That motion was settled by Judge Thelton Henderson's
 18 Order of December 12, 2012. Prior to this Order, the Monitor could only decide
 19 whether a given task was in compliance or not, and had no means of forcing
 20 compliance on the Oakland Police Department. Judge's Henderson's December 12,
 21 2012 order created the Compliance Director position to remedy this shortcoming the
 22 oversight process, and vested this person with the authority to force changes on the
 23 Oakland Police Department. This was a central goal which had prompted Plaintiffs'
 24 motion for a receiver.

25 The court stated that the Compliance Director's mission "will bring defendants
 26 into sustainable compliance with the NSA" (Judge Henderson's December 12, 2012
 27

1 Order, p. 2), and the Compliance Director was given broad powers to bring the OPD
2 into compliance with the NSA.

3 The Compliance Director cannot be blamed for the OPD's failure to attain
4 compliance with the NSA up to this point. He has done a commendable job, and
5 nothing in this Case Management Conference should be read to conclude that
6 Plaintiffs' attorneys believe this current travesty is the fault of anyone other than the
7 Oakland Police Department and the City of Oakland. Nevertheless, some sort of
8 immediate action appears necessary to force the OPD into compliance or, at the very
9 least, reverse this relentless trend of more and more tasks (many of which have been
10 in compliance for years) falling out of compliance. The Compliance Director is the
11 obvious person to try and take such appropriate action, and Plaintiffs' urge him to
12 forcefully assert the authority vested in him by Judge Henderson's December 12, 2012
13 Order moving forward.

14 Plaintiffs' attorneys hope that this Case Management Conference will mark the
15 beginning of a new trend which ultimately results in the OPD attaining compliance
16 with the NSA. But that can only happen if the City of Oakland and its police
17 department is prepared to take drastic steps both to reform itself and take the
18 necessary steps to attain full compliance with this settlement agreement that it and
19 its experts helped draft and did promise to fulfill over ten years ago.

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THE CITY'S STATEMENT

OVERVIEW

The City respectfully submits an update on the following:

- ◆ **The City's efforts to reduce racial disparities**
- ◆ **Task 2**—Internal Affairs Timelines
- ◆ **Task 5**—Internal Affairs Complaint Procedures
- ◆ **Task 20**—Span of Control
- ◆ **Tasks 24/25**—Force Investigation and Reporting
- ◆ **Task 26**—Force Review Boards
- ◆ **Task 30**—Executive Force Review Boards
- ◆ **Task 34**—Stop Data
- ◆ **Task 41**—Risk Management
- ◆ **Task 45**—Consistency of Discipline
- ◆ **Vehicle Pursuits**

In addition, the City's leaders and subject matter experts look forward to addressing any topics the Court raises at the CMC.

REDUCING RACIAL DISPARITIES IN POLICING

Reducing racial disparities is the point and prize of the City's reform efforts. That precept is foundational to every policy, practice, and investment the Department makes. Disparities plague policing across the nation. NSA or not, the City is fixed on reducing disparities within Oakland.

In just the first half of 2019, the Department responded to nearly 184,000 service calls and touched the lives of more than 200,000 people. In responding to these calls and doing their jobs, officers dutifully strive to be good guardians of the community they serve.

On a range of fronts, there have been letdowns. To name some, a sample of seventeen instances of force underreporting all involved African American or Latinx

1 persons; the Department's force-reporting policy was unclear; in certain situations,
 2 officers or their supervisors should have employed better tactics; the Department's
 3 risk-management computer system performed poorly, and it is taking longer than
 4 anyone hoped to install a new one; there were disparities in sustained findings (none
 5 were found in the discipline imposed); and the Department has missed certain
 6 timelines for Internal Affairs cases.

7 The City owns this. At the same time, there has been real progress, largely
 8 owing to the officers' earnest efforts and strong, top-down leadership.

9 Against that backdrop, two things are true: there are positive things to report
 10 about the City's efforts to combat disparities, and challenges remain.

11 **I. STOPS AND DISPARITIES ARE DECLINING**

12 Both stops *and disparities* among whom officers stop are decreasing. As the
 13 City previously reported, the Department reduced its total number of stops to 19,900
 14 in 2018, down from 30,000 in 2017. That reduction most significantly impacted
 15 African Americans. African Americans were subject to 10,924 stops in 2018, down
 16 from 19,185 stops the prior year. Forty-three percent fewer African Americans were
 17 stopped in 2018. That translates to 8,261 fewer times that African Americans were
 18 stopped.

19 This trend persists. Citywide in 2019, there were 14,232 total stops. African
 20 Americans were stopped 7,255 times—a further thirty-four percent reduction from
 21 2018.

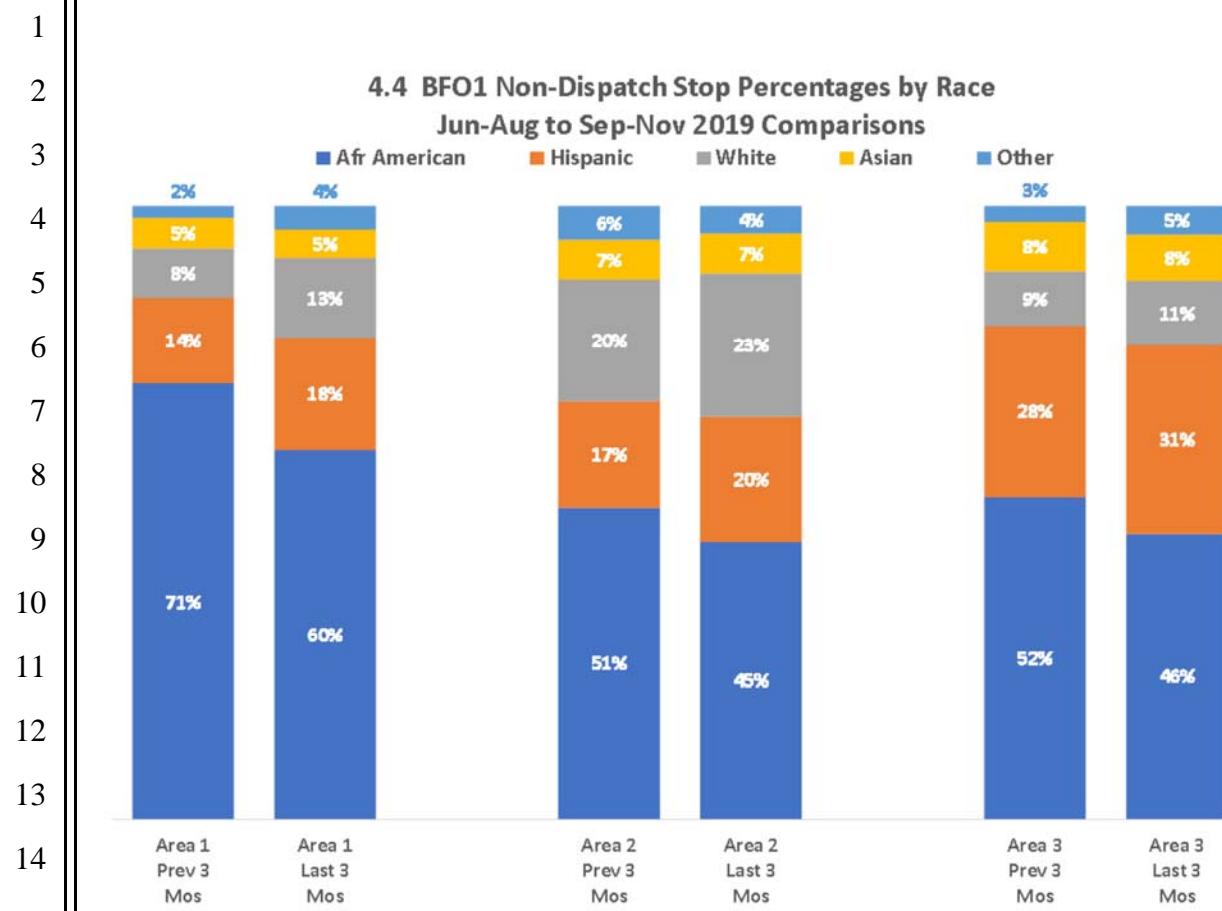
22 Along with a smaller footprint—please see Dr. Eberhardt's discussion about
 23 why this matters, Ex. A, *Oakland Stories* Transcript, at 23-25—recent data reflects
 24 this trending decrease in actual disparities across every patrol area:

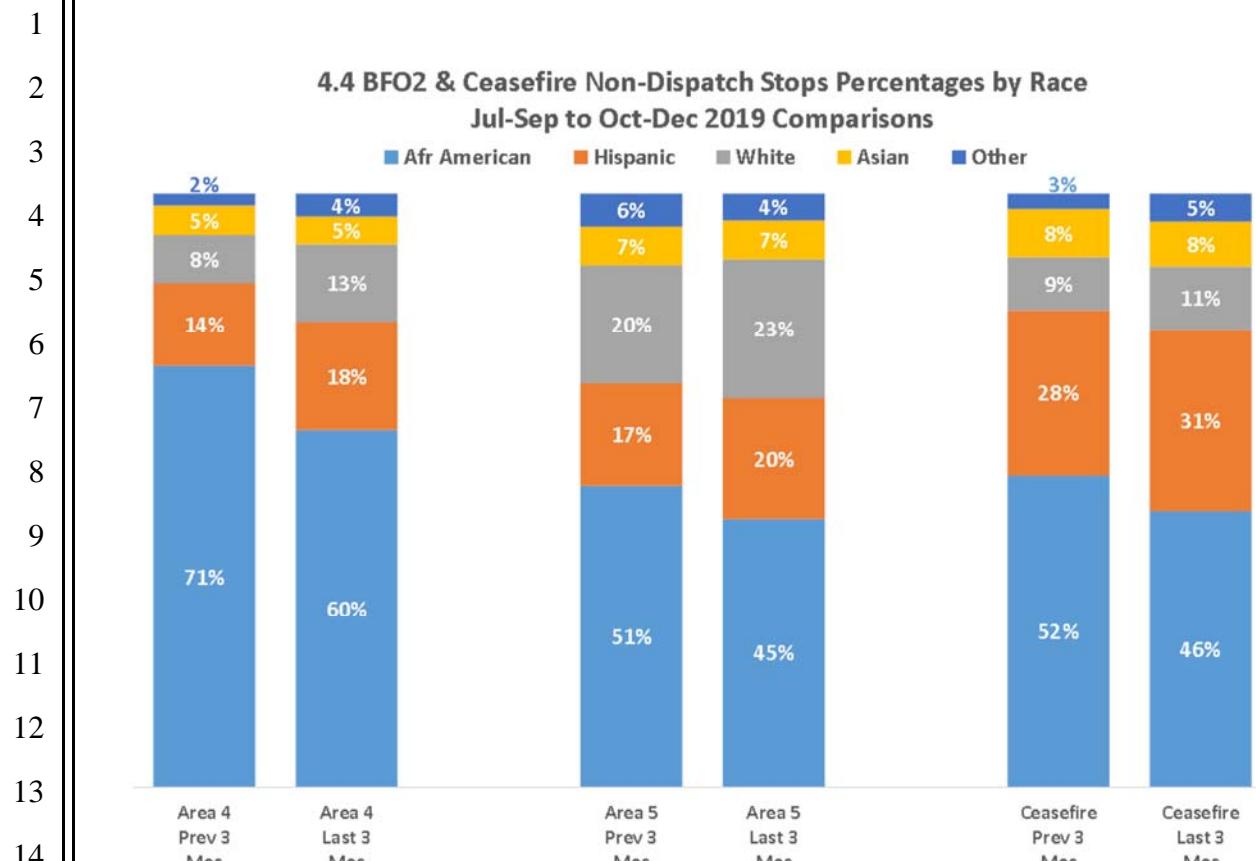
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As Dr. Eberhardt points out, the Department is making progress:

Q. -- as the mayor of Oakland, I need to know from you, have you seen evidence of culture change within the Oakland Police Department?

A. I have. I mean, I've seen evidence of it; and I think that culture change started even before we got there, you know. I think it -- you know, if we sort of look at other, you know, people like Jim Chanin and John Burris, they tell me they don't get the calls they used to get, you know, of people who feel they were harmed by somebody from the OPD, you know. So they think, you know, that this has been happening slowly for over the last ten years. But I've been there almost five years now and I've seen it happen myself in -- just in the time that I've been there. And other members of the Stanford team, we've all seen it. Real -- I mean, I think I can give you some examples of that, if you want.

Q. Well -- and are you seeing it, though, as something that's really been imposed by the community, demanded by City leadership? Or are you seeing some of this come from within the department, within rank-and-file?

1 A. I think it was coming from all places, but the thing that I
2 have seen that has changed in the five years is that it's coming
3 from within the department, that people believe in the work
4 and they're excited about the changes and that they're able to
5 move these outcomes. And I think that was especially the
6 case for the intel-led stops that we were just talking about.
7 That was a team effort. That wasn't something that was
8 imposed. That was something that, you know, people from all
9 sectors of the department worked with us on and we worked
10 together and came up with a metric, a way to track, you know,
11 this and measure it. And, you know, we've found just from
12 measuring which stops are intel-led. The measuring of it
13 actually has increased the number, the percentage, of intel-
14 led stops. And so, you know, that in and of itself is a victory
15 and that's helping to, we believe, to bring down the overall
16 number of stops.
17

18 Q. So the officers themselves are seeing the value --
19

20 A. Yeah.
21

22 Q. -- of slowing down, of being more thoughtful about the
23 reasons for their actions?

24 A. Right, right. And they know, you know, which stops, you
25 know, are going to take high priority. They're thinking about
26 maybe, you know, when they see a person that they're
27 considering stopping, you know, they're thinking about, you
28 know, is this a high-priority stop? How many of my other
 stops have been, you know, high-priority stops? And so it
 causes them to pause, right, and -- and that pausing actually
 is what you want, right, to arrest even the potential for bias.
 ..

18 And they're doing that; and so they're not -- you know, you're
19 less likely to stop someone now based on intuition, you know,
 than they were before.

20 Q. -- some of these actual kind of changes in policy and
21 practice --
22

23 A. Right.
24

25 Q. -- came out of this working group --
26

27 A. Right.
28

 Q. -- which had rank-and-file from every level --
 A. Yes.
 Q. -- of the organization, not just the command staff.
 A. That's right.

1 Q. Yeah.

2 A. That's right. And they embraced the change. They
3 believed in it; and when we implemented it, it actually had a
4 huge outcome. And then other people could see that outcome,
5 right? And so, then, that's a way, too, that you can see how,
6 you know, a change in narrative can happen, right. Because
7 for many years, at least for the first few years we were there,
8 you know, they would always say, Well, you know, we can't
9 really bring down the number of stops without the crime rate
10 going up. And, you know, it just is what it is and, you know,
so we have to kind of just take what we get. And they didn't
see the role of themselves or the role of policy in, you know, in
the numbers, you know, in producing the
outcome. But I think after this, after adding that intel-led,
you're seeing a policy change leading to a different outcome.
And so then that changes the narrative about whether we
needed this kind of policing, whether we needed to stop that
many people, right . . .

11 A. Because the crime rate is still going down. . . .

12 Q. You know, now, is what Oakland is doing, are all
13 departments doing this? Or do you think that there's
14 something about what the Oakland Police Department is
doing that other departments could benefit from?

15 A. I think -- yes. So not -- I don't know of any other
16 departments who are doing this. I think the OPD is pretty
17 progressive on this front and I think -- I'm hoping that other
18 departments will, you know, follow suit and learn from this
19 and that they would see the value in this; and I think -- I'm
20 hopeful that they will. It's -- it's been -- I think part of the
21 issue, though, is, I think, you know, after producing the
22 report, to not just drop the report and leave. I think part of
the -- the issue has to do with really working together to figure
out some solution. If you want, you know, some change in
outcome, that we can figure that out together. I think that
23 would have been hard to just have a report with some
recommendations and then, you know, you're kind of out. So
-- and so not only do we -- actually, are thinking about doing
this with other police departments, but other, you know --
other -- other types of sectors, right . . .

24 Q. Let's end . . . with you telling Oakland residents if there's
25 one thing you want residents to know about the Oakland
Police Department and their efforts to eliminate racial bias.
What do you want Oaklanders to know?

26 A. Well, I think I want them to know that change is possible,
27 that change is happening, 'cause sometimes it looks like
things are the same. But they're not. I mean, there are a lot
28 of people who are working on these issues, who care about the
issues. There are people, both within the department and

1 outside of it, who are pushing to move the needle on this and
 2 we've had some wins, right. We have been able to push the
 3 needle in lots of ways. And I also want the city to know that
 4 there are just really innovative things happening within the
 5 department that other police departments will -- I believe --
 6 will pick up and find useful. And I think, especially -- you
 know, we were talking about the intel-led work, but also the
 body-worn camera way to improve police-community
 relations. I think it's huge and it's -- to the extent that we're
 not doing that and other departments aren't doing that, I feel
 like it's a real missed opportunity. And so I applaud the -- you
 know, the department for going in that direction.

7 Ex. A, *Oakland Stories* Transcript (https://youtu.be/modnb_nP7ME), at 25-32 (Oct. 25,
 8 2019).

9 **II. THE DEPARTMENT HAS A NEW RISK MANAGEMENT SYSTEM**

10 The Department's new risk management system, VISION, went online just
 11 before the new year. VISION offers three main tools: a personnel database, an early
 12 warning system, and interactive dashboards (the dashboards are not yet online).
 13 Compared to its predecessor, VISION is faster, more reliable, and easier to use.

14 Most significantly, once fully implemented, VISION will allow supervisors to
 15 zoom in and out on stops, arrests, force, complaints, collisions, pursuits, and other
 16 data by individual officer, squad, or larger groups in real time.

17 The Department is committed to making the most of this system and using it to
 18 further enrich its risk management meetings. Each meeting includes an assignment
 19 of deliverables to commanders based on the meeting and "an extensive review of
 20 [those] deliverables" at the next meeting. Dkt. No. 1240, at 21. In its most recent
 21 report, the IMT discussed this process. Dkt. No. 1357, *66th Report*, at 10 (Feb. 17,
 22 2020). Please see the **TASK 41—RISK MANAGEMENT** section below for further
 23 detail.

24 **III. THE DEPARTMENT'S BEAT INTEGRITY PROGRAM IS PROMISING**

25 The Department is continually examining new methods to combat disparities.
 26 The Chief, for instance, has made clear that the Department places little value on low-

1 level equipment stops that do not present immediate safety risks unless they are tied
2 to a crime. Overall, the Department is concentrating on intelligence-led policing.

3 In this vein, the Department has been underscoring so-called “beat integrity.”
4 The idea is to focus officer presence and patrol activity on assigned beats. This
5 encourages officers to better understand their beat, learn the needs of the community
6 on that beat, and cooperate with community members to determine the best ways to
7 address those needs.

8 Area supervisors study data about beats and the officers who serve each beat.
9 That review informs supervisors’ direction to officers. Supervisors stress beat pride,
10 beat accountability, activity other than stops (such as high visibility, security checks,
11 and investigative follow-ups), and intelligence-led stops.

12 Here is an example of those mandates and messaging, as set forth in an email a
13 commander sent to officers:

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- 1 • Take care of one another and our community, demonstrate safe, fast, and professional
2 response to calls; conduct excellent preliminary investigations; demonstrate Beat pride
3 and integrity, contribute meaningful discretionary stops, patrols and security check
4 activity. Help us succeed by proactively managing calls, coverage, and direction to meet
5 expectations
- 6 • Knowledge and awareness of recent 10851, 215, 211, 459 IntSum info, DBs and
7 descriptions for intel-led stops
- 8 • Constant focus on main corridors for intel-led stops, high visibility deterrence, security
9 checks (Advise dispatcher or use MDT to create/log Security check incidents), and fast
10 response to priority robberies and burglaries
- 11 • Are your discretionary stops meaningful and done with the intent to address crime and
12 public safety with as much effectiveness as possible?
- 13 ➤ Is the stop necessary to address a traffic or public safety hazard? This stop addresses
14 observed unlawful behavior that causes danger in our community. To address
15 allegations of profiling or bias, we know and remind ourselves that our stops are
16 made due to the observed unlawful activity and need to intervene **regardless** of the
17 type of vehicle involved or description of pedestrian/driver/occupant. It is not a
18 pretextual stop or a stop made in a high crime area for the purpose of deterring more
19 serious criminal activity in any way. Examples:
 - 20 ○ Vehicle runs a stop sign, stop light, or commits some other dangerous moving
21 violation
 - 22 ○ Vehicle's equipment is inoperable or damaged to the extent that a traffic and
23 public safety issue exists (headlights out/off during hours of darkness, brake
24 lights inoperable, etc. and condition may lead to collision)
- 25 ➤ Is the stop precision-based? This stop results from the identification of a specific
26 problem and/or problem location – usually in partnership with the community – and
27 is accompanied by a Beat officer request for enforcement, directive, or problem-
28 solving response. Examples:
 - 29 ○ Homeless encampment problem-solving project with requests to identify and
30 contact persons drinking in a park in public;
 - 31 ○ Fire danger in the hills with request to security check and contact persons
32 associated to groups that may be drinking, smoking, and lighting fireworks in
33 the identified location
 - 34 ○ Specific traffic safety moving violations at identified
35 locations/times/intersections/addresses
 - 36 ○ Security checks in a high auto burglary neighborhood and person observed
37 looking into parked vehicles and checking door handles
- 38 ➤ Is the stop intelligence-led? An intel-led stop requires that we know information –
39 prior to the initiation of the stop – that the driver, occupant, vehicle or pedestrian
40 about to be stopped is described or named and related to a specific criminal
41 want/trend/offense/warrant/Intsum, etc. By using information and intelligence, we
42 can more effectively contact the relatively few people who are causing the most harm
43 in our Area. Examples:
 - 44 ○ A blue 211 vehicle with paper plates is listed in the DB and seen in the Area –
45 pretext stop to identify occupants.
 - 46 ○ A photo and warrant provided via investigator email and individual is
47 observed
 - 48 ○ A named individual connected to an Area gang is prioritized and identified for
49 a probation search

1 The results are promising, as this Area 2 data shows:

	Feb. 1, 2018 to May 31, 2018	Feb. 1, 2018 to May 31, 2019
Non-Intelligence-Led Stops	561	284 49% reduction
Non-Intelligence-Led Stops of African Americans	352	138 60% reduction

8 Given these results, the Department is increasing its emphasis on beat
9 integrity.

10

11 **IV. THE DEPARTMENT IS STUDYING DISPARITIES IN DISCIPLINE**

12 The Department, with input from Plaintiffs' counsel and other stakeholders,
13 contracted the Hillard Heintze, risk management consulting firm to study whether
14 there are disparities in officer discipline, and if so, to identify causal or correlative
15 factors. The firm mined data from 2014 through 2018. At least within law
16 enforcement, there is no apparent prior study as expansive as this one. The
17 stakeholders guiding the study include the Internal Affairs Commander, the City's
18 Race & Equity Director, Plaintiffs' counsel, the Oakland Black Officers Association,
19 and other officer affinity groups.

20 When the City received the study's first draft, all stakeholders agreed that
21 significant revisions were required. For one thing, the study did not differentiate
22 between sworn and civilian personnel. For another, in certain places the study did not
23 distinguish between not-sustained, exonerated, and unfounded findings. The firm
24 thus had to re-run the data and re-examine the results. Earlier this month, the firm
25 provided a second draft, which the stakeholders are reviewing.

26 The most significant finding is that African American officers were thirty-nine
27 percent more likely to have Class 1 complaints sustained, and twenty-five percent

1 more likely to have Class 2 complaints sustained. Interestingly, there is no disparity
 2 in discipline imposed for sustained complaints.

3 These results are extremely concerning to the Department and City leaders; the
 4 Department is taking immediate steps address this issue. First, the Department has
 5 increased its training of investigators. Second, the City is looking to add personnel—
 6 including a civilian commander—to Internal Affairs. Third, the City is assessing the
 7 idea of reassigning some or most Department-Level Investigations to Internal Affairs,
 8 with the aim of boosting consistency and efficiency within those investigations.

9 The Department is also considering the lack of disparity in discipline and
 10 whether this finding may shed additional light on the origins of disparity in sustained
 11 complaints. Because the executive staff are consistently involved in every aspect of
 12 the imposition of discipline, the lack of disparity is perhaps unsurprising. The
 13 Department is interested in exploring whether there are ways to make investigations
 14 similarly more consistent, and the impact that may have on the reflected disparity in
 15 sustained complaints.

16 **V. THE DEPARTMENT IS WORKING TO INCREASE DIVERSITY**

17 Increasing the Department's diversity is a priority for the City. The goal is for
 18 the Department to reflect the community it serves. The top commanders—the Chief,
 19 the Assistant Chief, three Deputy Chiefs, and a Director—are a diverse group that
 20 includes three African Americans, three women, and one person who grew up in
 21 Oakland. The City has committed resources to injecting more diversity into the rest of
 22 the Department.

23 **A. Department Demographics**

24 There are approximately 749 sworn officers. Roughly ten percent live in
 25 Oakland. Demographics are as follows:

Race/Ethnicity	Female (number)	Male (number)
Asian	7	91
African American	19	108
Pacific Islander	1	28
Latinx	34	171
Native American	1	2
Undeclared	4	15
White	38	232

Over the years, the demographics have been as follows:

Race/Ethnicity	2018 Census	OPD 2016	OPD 2017	OPD 2018	OPD 2019
White	36.7%	39.7%	38.8%	38.4%	36.4%
African American	24.3%	18%	17.3%	16.7%	16.9%
Asian	15.9%	15.1%	15.3%	16.9%	13.3%
Latinx	27%	23.7%	24.6%	25.2%	26.9%
Other	--	3.5%	4%	2.7%	6.6%

B. Background and Recruitment Improvements

Over the last two years, the Department has been overhauling its Background and Recruitment process. Here are some examples of those changes:

- The Bureau of Services took over the process.
- The Department began using more testing locations.
- The Department began recruiting lateral officers.
- The Department expanded its background investigator bench.

- The Department contracted with “Interview Now” to use its special technology to recruit candidates, contact them, and collect their demographic data.
- The Department beefed up its recruitment efforts within Oakland.
- All background investigators received the 32-hour POST background investigation training. POST approved an in-house training for new investigators.
- The Department eliminated discretionary screening. All eligible candidates are now assigned to a background investigator.
- All candidates are evaluated in a “whole person assessment.” There are no automatic drug or economic disqualifiers. All non-felony criminal behavior is evaluated according to the circumstances, the person’s age, and the person’s later behavior.
- Applicants are no longer sorted into priority piles.
- The Department eliminated non-validated pre-hire physical tests, such as pull-ups.
- The Department adopted POST-validated oral board questions.
- The Training and Background units meet regularly to review background information on candidates who fail, quit during the academy or field training, or are terminated during training.

C. Incoming Demographics

Later this month, the 183rd Academy will graduate. Race and gender demographics are as follows:

Race/Ethnicity	Number
Asian	8
African American	11
Latinx	16
White	4
Other	4

VI. THE DEPARTMENT CONTINUES ITS WORK WITH STANFORD

The Department is expanding its work with Dr. Jennifer Eberhardt and her Stanford team. Dr. Eberhardt's team will examine the extent to which situational factors—such as the location of the incident, underlying crime rate of the neighborhood, subject demographics, officer service history, and de-escalation training—may influence an officer's decision to use force and construe the encounter as a use-of-force incident. Decades of social science research suggest ways in which situational features and the broader environment impact cognition, perception, and behavior toward others. It is difficult to determine, however, what role these features play in use-of-force decisions.

The study will focus on the degree of choice officers feel they can exercise when deciding whether to use force, officers' perception of threat based on the body movement of suspects, and training takeaways. The City is extremely grateful for Dr. Eberhardt's innovative work.

VII. GENERAL ORDER R-02

The Department has a new, data-driven policy on searching people who are on probation and parole. Dkt. No. 1303-7, *General Order R-02*. It is widely lauded by many, including the Alameda County Public Defender's Office, as ahead of the curve. The policy is now in effect.

TASK 2—INTERNAL AFFAIRS TIMELINES

Since the last CMC, the Department carefully examined its failure to meet Task 2 timelines and adopted corrective measures. These fixes are not meant to simply check the box for the timelines; rather, they are meant to achieve lasting change.

Task 2 centers on the idea that “[f]airness to complainants, members/employees and the public requires that internal affairs investigations be completed in a timely fashion.” To help achieve that goal, Task 2 provides two things:

1. . . . OPD shall develop policies regarding timeliness standards for the completion of Internal Affairs investigations, administrative findings and recommended discipline.
2. Compliance with these timelines standards shall be regularly monitored by IAD command and the Department command staff. If IAD experiences an unusual proliferation of cases and/or workload, IAD staffing shall be increased to maintain timelines “at a break.”

The Department has timelines to help make sure it completes thorough investigations and does not miss the opportunity to impose appropriate discipline. To that end, the Department requires that 85% of Class I and Class II misconduct investigations be completed within 180 days.

In 2016, the Department hit that mark in 94% of its cases. The next year, it did so in 93% of its cases. In the first half of 2018, though, the percentage declined to 67%. And over the next year, the percentage continued to drop.

In late 2018, Internal Affairs began monitoring the backlog. By Spring 2019, the Chief redirected resources to completely clear the backlog—though a new one then formed. In July 2019, the IMT found that the Department was not complying with Task 2. Dkt. No. 1296, at 2-3, *62nd Report* (July 11, 2019).

All along, the Department has been stressing investigatory quality over checking the box for deadlines. In a recent audit, the Department's Office of Inspector

1 General (OIG) found that in 100% of the cases with sustained findings it reviewed, the
 2 Department met the state's statutory deadline for imposing discipline.

3 The OIG made the following findings and recommendations as part of the audit:

5 **Findings and Recommendations**

OIG Findings	OIG Recommendations
<p>Finding #1 An unstable environment due to implementation of new technology, inevitable personnel changes in management, and not having effective controls to minimize the effects of such changes contributed to investigations involving allegations of Class I and Class II employee misconduct and approved by the Internal Affairs Division Captain/Chief of Police from January 1, 2018 to June 30, 2019 to exceed the Oakland Police Department's 180-day timeline over a 15-month period.</p>	<p>Recommendation #1 Revise Internal Affairs Division Policy 10-01, Internal Affairs Policy and Procedures Manual, dated January 19, 2010, to include procedures related to technology issues causing a slowdown in the processing of complaints. Not having procedures in place to minimize the effects technology issues can have on an operation is a contributing factor to some investigations exceeding the 180-day timeline and lasting approximately 15 months.</p>
<p>Finding #2 In 77% of the sampled cases, the Intake Section's processing of complaints exceeded 48 days, rendering the process to range from 49 to 123 days. Upon the completion of the Intake Section's processing of a complaint, the OPD took 15 days or less before assigning an investigator to the case in only 58% of the sampled cases. The absence of an established, documented benchmark for each unit, section, division and bureau's handling of an investigation is a contributing factor to investigations involving allegations of Class I and Class II employee misconduct offenses and approved by the IAD Captain/ Chief of Police from January 1, 2018 to June 30, 2019 to exceed the OPD's 180-day timeline. Goal setting is most important when striving to achieve excellence.</p>	<p>Recommendation #2 The OPD should ensure its Executive Team routinely receives reports that include, at minimum, the compliance status of timelines and cases approaching and exceeding the 180-day timeline.</p> <p>Recommendation #3 The OPD should invest in investigation case management software to ensure more effective and/or efficient methods of tracking investigations' progress and status, allowing for the early detection of issues or concerns that could cause delays and increase the potential to exceed the 180-day timeline. Investigation case management software will allow the Department to collect incident and investigation summaries, interviews, evidence, relevant documents, links and more, all in one centralized location. In addition, it efficiently manages investigator workloads with a clear view into which cases they are assigned to, how many cases are open, and how long they have been active. With this data, the Department will have the insight they need to mitigate future investigations and protect the organization from risks.</p>
<p>Finding #3 In 60% of the sampled cases, the assigned investigator completed the investigation within 93 days. However, all but one case took an additional 53 to 257 days of review and/or additional investigation prior to the review and approval by the IAD Captain/Chief of Police.</p>	

	OIG Findings	OIG Recommendations
1	<p>The Chronological Activity Logs are poorly documented, in that the reason(s) for taking more than 30 days for the IAD Captain's/Chief of Police's review and approval are not explicitly stated.</p> <p>Finding #4 In 40% of the sampled cases, the assigned investigator exceeded 93 days to complete the investigation, and all but five cases took an additional 33 to 217 days of review and/or additional investigation prior to being finalized for review and approval by the IAD Captain/Chief of Police.</p> <p>Finding #5 Dates are not routinely entered in PRIME's "Date the Investigator is Assigned" and the "Investigation Due Date" data fields, precluding the OPD the capability of determining the length of time it takes to assign an investigator to a case and how often investigators are adhering to the due dates.</p>	<p>Recommendation #4 The OPD should adopt the <i>DLI Review Tips and Guidance</i> information the IAD Captain provided in the notice he sent to all commanders and managers, via email, dated August 30, 2019—and which is infused throughout this audit as a Department Response—by codifying the information in a Departmental Training Bulletin or an Organization Unit Policy and Procedures such as Bureau of Field Operations Policy and Procedures, the Internal Affairs Division Policy and Procedures, the Communications Division Policy and Procedures, etc.</p> <p>Recommendation #5 To ensure efficiency throughout the entire investigation process, the OPD should establish documented benchmarks for each unit, section, division and bureau's handling of an investigation, striving to complete most investigations much sooner than 180 days.</p> <p>Recommendation #6 The OPD should ensure the date an investigator is assigned and the date the investigation is due is entered in the PRIME data fields to monitor whether investigators are adhering to due dates.</p> <p>Recommendation #7 The OPD should conduct value stream maps to analyze its current complaint investigation process and design a future investigation process with reduced lean wastes.</p> <p>Recommendation #8 The OPD should conduct caseload assessments for division-level investigations to ensure investigators are capable of completing investigations in a timely manner.</p>

	OIG Findings	OIG Recommendations
22	<p>Finding #2 Additional Observation The OPD's BFO centralized tracking system is inefficient and prohibits the OPD from knowing the whereabouts of all its division-level investigations.</p>	<p>Recommendation #9 The OPD should ensure the BFO Administrative Sergeant is notified by email of all DLI's that are returned directly to the Internal Affairs Department.</p>

1 *Please see Ex. B, Combined Quarterly Report, and Ex. C Response.*

2 The Department is adopting each recommendation. The Department is
 3 rewriting its Policy and Procedures manual. Area commanders are more closely
 4 tracking deadlines and submitting tracking data to Bureau Chiefs and the Chief's
 5 Executive Team. There is a single tracking document that all involved at every level
 6 can use. The Department is providing more guidance for Department-Level
 7 Investigations. And the Department is considering the prospect of a new case
 8 management system.

9 In addition, the Department plans to create another civilian leader position
 10 within Internal Affairs and assessing whether to have Internal Affairs personnel
 11 rather than field sergeants perform Department-Level Investigations.

12

13 **TASK 5—INTERNAL AFFAIRS COMPLAINT PROCEDURES**

14 The IMT last reviewed Task 5 in its *Sixty-Fourth Report*. Dkt. No. 1337, *64th*
 15 *Report*, at 4-9 (Oct. 25, 2019). The IMT “deferred” its compliance finding “based on the
 16 provisions of the March 23, 2016 Order, [the IMT’s] general concerns, and the findings
 17 of our forthcoming analysis of the Department’s investigation of the [Pawlik incident].”
 18 The IMT has not yet released that report. Since July 2018, Task 5 reviews have been
 19 mainly positive. Dkt. No. 1240, at 14-16, *JCMS* (March 22, 2019). The City has
 20 implemented all of the Court Investigator’s recommendations concerning subtasks.
 21 *Id.*

22 Here is a snapshot of the IMT’s findings as to the subtasks dealing with the
 23 quality of investigations, which are the key subtasks:

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SUBTASK	56TH REPORT	58TH REPORT	61ST REPORT	64TH REPORT
5.15/ 5.16	The Department gathered all relevant evidence and conducted appropriate follow-up interviews but the IMT disagreed with how the Department assessed the evidence in one of 15 cases.	The Department gathered all relevant evidence, conducted appropriate interviews, and properly assessed the evidence in all 18 cases.	The Department gathered all the relevant evidence, but the IMT disagrees with how the Department assessed the evidence in two of 19 cases.	The Department gathered all the relevant evidence, but the IMT disagreed with the Department's findings in one of 25 cases.
5.17	“OPD has a sustained history of 100% compliance with this task.”	“OPD has a sustained history of 100% compliance with this task.”	“OPD has a sustained history of 100% compliance with this task.”	“OPD has a sustained history of 100% compliance with this task.”
5.18/ 5.19	The IMT disagreed with findings in one out of 15 cases.	“We did not disagree with the findings in any of the [18] cases reviewed.”	The IMT disagreed with the findings in two of 19 cases.	The IMT disagreed with the Department's findings in one of 25 cases.
5.21	The IMT approved of all the administrative closures in the sample.	The IMT approved of all the administrative closures in the sample.	The IMT approved of all the administrative closures in the sample.	The IMT approved of all the administrative closures in the sample.

As this chart shows, the IMT has approved of 95% of the cases it reviewed in the past three reviews. Going back to 2010, there has been an over-90% approval rate.

TASK 20—SPAN OF CONTROL

The IMT reviewed Task 20 in its *Sixty-Fourth Report*. Dkt. No. 1337, *64th Report*, at 10-11 (Oct. 25, 2019). Finding that the Department complies with this task, the IMT said that the Department “has institutionalized the practices of tracking how

1 each squad is supervised each day; planning when possible, for expected absences, and
 2 considering how to fill in for personnel who are absent unexpectedly.” *Id.*

3

4 **TASKS 24/25—FORCE INVESTIGATION AND REPORTING**

5 In its *Sixty-Fifth Report*, the IMT found that the Department has “taken
 6 numerous steps to address the proper reporting of use of force and the concerns that
 7 have been identified.” Dkt. No. 1347, *65th Report*, at 5 (Dec. 19, 2019).

8 Those concerns surfaced as early as March 2018, when the OIG began flagging
 9 potential force-reporting irregularities, including for the IMT. Since then, the OIG
 10 published a firearm-pointing audit in 2018, *2018 Third Quarterly Report* (2018), and a
 11 global-force-reporting audit in 2019, *Special Report* (July 30, 2019). The IMT most
 12 recently discussed Tasks 24 and 25 in its *Sixty-Fifth Report* (Dec. 19, 2019). Dkt. No.
 13 1347.

14 The OIG will continue to review force reporting each year.

15 In addition, the Department is strongly and repeatedly messaging to officers its
 16 expectations concerning the use of force, reporting that use, and body-camera
 17 activations.

18 The City provides the following update on key issues born of the OIG’s report,
 19 including Internal Affairs’ review of seventeen cases, policy revisions, and force
 20 reporting statistics.

21

22 **I. THE DEPARTMENT DRILLED DOWN ON SEVENTEEN CASES FROM** **23 THE OIG’s SPECIAL REPORT**

24 The OIG found that in seventeen 2018 incidents—twelve involving a firearm
 25 pointing and five a weaponless defense technique—officers failed to fill out use-of-force
 26 forms. The OIG referred those incidents to Internal Affairs, which has investigated
 27 each one.

28

1 Here is a summary of the findings:

2

3 Case No.	4 Summary	5 Findings
6 1	7 The OIG referred the case based on the potential failure to report force.	8 There were sustained findings for the failure to report force and for profanity. No unreasonable force was used.
9 2	10 The OIG referred the case based on the potential failure to report force—pointing of a firearm.	11 There was no sustained finding for the failure to report force.
12 3	13 The OIG referred the case based on the potential failure to report force—pointing of a firearm—and other performance of duty violations.	14 There was no sustained finding for the failure to report force. Supervisory notes were placed in the officer's file based on other findings.
15 4	16 The OIG referred the case based on the potential failure to report force—Level 4.	17 There was a sustained finding for the failure to report force. There was no finding of unreasonable force.
18 5	19 The OIG referred the case based on the potential failure to report force—Level 3 takedown.	20 There was no sustained finding.
21 6	22 The OIG referred the case based on the potential failure to report force and other performance of duty violations—Level 4.	23 There was a sustained finding for the failure to report force. There was no finding of unreasonable force.
24 7	25 The OIG referred the case based on the potential failure to report force and other performance of duty violations—Level 2.	26 There were sustained findings for the failure to report force and for use of force inconsistent with OPD policy.
27 8	28 The OIG referred the case based on the potential failure to report force—pointing of a firearm.	29 There was a sustained finding for the failure to report force. There was no finding of unreasonable force.
		30 There was no sustained finding.

1	10	The OIG referred the case based on the potential failure to report force—Level 3.	There was no sustained finding.
2	11	The OIG referred the case based on the potential failure to report force—pointing of a firearm.	There was a sustained finding for the failure to report force. There was no finding of unreasonable force.
3	12	The OIG referred the case based on the potential failure to report force—pointing of a firearm.	There was no sustained finding.
4	13	The OIG referred the case based on the potential failure to report force—pointing of a firearm.	There was no sustained finding.
5	14	The OIG referred the case based on the potential failure to report force—pointing of a firearm.	There was no sustained finding.
6	15	The OIG referred the case based on the potential failure to report force—pointing of a firearm.	There was no sustained finding for the failure to report force. There was a sustained finding for demeanor.
7	16	The OIG referred the case based on the potential failure to report force—pointing of a firearm.	There was no sustained finding for the failure to report force.
8	17	The OIG referred the case based on the potential failure to report force—pointing of a firearm.	There was no sustained finding.

21

22 **II. THE DEPARTMENT, THE POLICE COMMISSION, AND THE**

23 **COMMUNITY ARE COLLABORATING TO UPDATE POLICY**

24 The Department, the Police Commission, and the community are working

25 together to enhance policies on force and force reporting.

26 First, the Department and the Police Commission together penned and

27 published Special Order 9196. The order rewrites General Orders K-3 and K-4 to

1 make clear the types of force that must be reported, including firearm pointing.

2 Training on the new policy is underway.

3 Here are some of the key changes:

4 ▪ Striking subjective language—such as “intentional” and “low and ready”—
5 that could lead to uncertainty about when officers must report firearm
6 pointing.

7 ▪ Redefining “takedowns” to mean “physical force used by a member to cause a
8 person to go to the ground not under their control.”

9 ▪ Clarifying when injuries trigger reporting.

10 ▪ Reclassifying certain force.

11 In addition, the Department, the Police Commission, and community members
12 together updated General Order K-3 to track California Assembly Bill 392’s
13 framework concerning lethal force. The ACLU participated in the process. Last
14 month, the City adopted the new policy. Now, the same committee is meeting
15 regularly to further rewrite and enhance the policy.

16 Finally, the Chief issued Special Order 9191 requiring supervisors to review
17 body-camera footage when officers report that a person threatened an officer, resisted
18 arrest, or battered an officer.² Those types of incidents may be more likely to involve
19 force.

20 **III. THE DEPARTMENT IS CAPTURING MORE FORCE**

21 At root, all these efforts—and those described in the last status report, Dkt. No.
22 1303, *JCMS*, at 20-25 (Aug. 14, 2019)—have made a difference. The Department is
23 accurately capturing more force:

24

25

26

27

² The specific laws are Cal. Penal Code §§ 69 (obstructing or resisting executive officer), 148 (resisting, delaying, or obstructing), and 243(b),(c) (battery on a peace officer).

Type	Description	2018	2019	Change
16	Weaponless Defense Technique Other Than a Control Hold—Level 3	25	56	124%
22	Intentionally Pointing a Firearm at a Person	382	1236	224%
26-16	Weaponless Defense Technique Other Than a Control Hold—Type 16 lowered to Level 4	68	143	110%

IV. THERE IS NO APPARENT UPTICK IN ACTUAL OR UNREASONABLE FORCE

Two months ago, the IMT noted that the increased reporting does “not appear to signal a rise in the actual use of force.” Dkt. No. 1347, *65th Report*, at 5 (Dec. 24, 2019). For that report, the IMT reviewed fifty-five cases involving the use of Level 3 or Level 4 force. *Id.* at 2. In no case was the use of force “inappropriate or excessive,” the IMT found. *Id.* at 3. Likewise, the OIG found no case of an officer using unreasonable force (although there was one sustained finding upon further review by Internal Affairs).

V. THE DEPARTMENT IS ADDRESSING BODY-CAMERA ACTIVATION CONCERN

In the *Sixty-Fifth Report*, the IMT raised concerns about failed or late body-camera activations, and about boilerplate language in force reports. *Id.* at 4. As noted in that report, the Department is addressing both issues. *Id.*

First, the Department is holding officers accountable. The first time an officer forgets to activate their camera, the officer receives counseling and a note in their personnel file. If it happens again, there is progressive discipline. The Department has made clear to its supervisors that they must ensure that officers are complying with the body-camera policy.

Second, when the OIG looks at other subject matters, the OIG will also assess compliance with the body-camera policy.

1 Third, in August 2019, the Department set its cameras to have a thirty-second
2 buffer. This means that the camera recordings will include footage from the thirty-
3 second window prior to activation.

Finally, it is worth noting that in 2019, there were 286,970 body-camera activations. There were seven sustained findings for activation failures.

TASK 26—FORCE REVIEW BOARDS

8 The IMT last reviewed Task 26 in its *Sixty-Fifth Report*. Dkt. No. 1347, *65th*
9 *Report* (Dec. 19, 2019). Below, the City incorporates its response to that report. Dkt.
10 No. 1348, *Response to 65th Report*, at 1-2 (Dec. 24, 2019).

11 The Department convenes Force Review Boards to critically review the use of
12 Level 2 force, hold officers accountable, and enhance policies and practices. See OPD
13 General Order K-4.1 (Dec. 15, 2016). Since 2014, the Department has been in
14 compliance with Task 26. Dkt. No. 1219, *57th Report* (Nov. 2 2018), at 5 (discussing
15 the City’s compliance history). Over the past five years the IMT has observed more
16 than sixty FRBs, and more than 95% percent of the time the IMT agreed with the
17 Boards’ findings on whether force was used within policy. At least once before, the
18 Board and the IMT have reached different conclusions. *Id.* Overall, though, the IMT
19 has “consistently found review boards to be detailed and thorough.” *Id.*

20 Most recently, the IMT reviewed six FRBs that were held this year. Dkt. No.
21 1347, *65th Report*, at 12 (Dec. 19, 2019). The IMT disagreed with one of the Board's
22 findings in one case, stating, “[the IMT] agreed with all of the Board's concerns
23 regarding scene supervision and the need to use force at the time it was used, and we
24 were quite frankly surprised that they voted the force in compliance with little
25 deliberation.” *Id.* at 13.

26 To begin with, the Department has made clear that it strongly prefers different
27 tactics in the subject scenario. To that end, the Board and Chief Kirkpatrick agreed

1 that the scene supervisor should receive discipline for not exercising better control and
 2 not making better tactical plans. Further, the Board ordered the supervisor's Captain
 3 and Lieutenant to assess the training he needs to improve in those areas. In addition,
 4 the Board ordered the Department's Training Division to review its Crisis
 5 Intervention Team curriculum to make sure that the Department is following best
 6 practices for interacting with people who are experiencing mental health crises. The
 7 Board also ordered the Training Division to assess whether one of its subject matter
 8 experts in this field should continue to serve in that role.

9 The City believes that all this demonstrates that the Board followed a "detailed
 10 and thorough" FRB process. The Board carefully reviewed all the relevant records,
 11 video footage, and policies. Over two sessions, the Board scrutinized this evidence,
 12 heard from four subject matter experts, and had meaningful exchanges with each
 13 other and the IMT. The Board then wrote a detailed, 33-page report with
 14 recommendations on discipline, training, and policy. The FRB report makes plain
 15 that there were pointed and probing deliberations. The Board immediately saw the
 16 need for accountability and for a better approach. At the same time, the Board
 17 recognized that the question of whether the use of force itself failed to comply with the
 18 law and the Department's policy and training was a separate issue.

19 On that question, the Board and Chief Kirkpatrick each deliberated extensively.
 20 Chief Kirkpatrick, for instance, asked two respected outside subject matter experts on
 21 force—one a retired chief and the other a leading expert in the state—to review the
 22 policy and body camera footage. Both experts found that the use of force complied
 23 with the law and Department policy.

24 This case prompted the Department to evaluate changes to both policy and
 25 training. As a result, the Department may now propose revisions. During the FRB,
 26 however, the Board considered and interpreted existing policy.

27

28

JOINT CASE MANAGEMENT STATEMENT (C 00-04599 WHO)

1 In sum, two things are true: the process was searching, and reasonable minds
 2 differ on one of the Board's findings. The Board's conclusions are supported by specific
 3 Ninth Circuit cases, policies, training, and evidence. And the Department did not shy
 4 away from handing down discipline it expects to uphold.

5 Given all of this this, combined with the Department's strong compliance
 6 history on this task, the City seeks guidance on the compliance metric that applies.
 7 Task 26 does not mandate that the Board and the IMT agree on every finding in every
 8 case. Nor should it. Reasonable minds will sometimes differ, and thus a standard of
 9 one-hundred percent agreement between the Board and the IMT is not workable. Yet
 10 taking the City out of compliance based on a disagreement over a single finding
 11 suggests such a standard.

12

13 **TASK 30—EXECUTIVE FORCE REVIEW BOARDS**

14 The IMT has found that seventeen of the past eighteen EFRBs complied with
 15 the NSA. *See* Dkt. No. 1240, *JCMS*, at 16-17 (March 22, 2019). There was no EFRB
 16 in 2019. There was one EFRB in January 2020, concerning a canine deployment. The
 17 proceedings were thorough and lasted three days.

18 The City remains committed to holding independent and rigorous review
 19 boards. To that end, the Department is refining the Criminal Division's officer-
 20 involved-shooting investigatory process, focusing on increased supervisory
 21 responsibility, more training for investigators, implicit bias, community outreach, and
 22 best industry practices.

23 In addition, the City has requested to have a non-voting outside observer
 24 participate in EFRBs. The City would like to work with the IMT to implement this
 25 procedure.

26 The Department's training and messaging—which EFRB's help shape—is
 27 having an impact. For instance, officers recently showed extreme restraint in

1 attempting to arrest an armed man who was ramming OPD equipment with his car.

2 A citizen captured part of that incident:

3 https://twitter.com/hyphy_republic/status/1225180110782775296

5 **TASK 34—STOP DATA**

6 The IMT has not reviewed Task 34 since the last CMC. A final step to
7 complying with that task is fully implementing Stanford’s 50 recommendations. Two
8 of them remain outstanding: No. 12—Build a stop data dashboard, and No. 17—Hire a
9 data manager.

10 **TASK 41—RISK MANAGEMENT**

11 In its most recent report, the IMT found that the Department is complying with
12 Task 41 but said it is “concerned that the potential of the system is, for now,
13 surpassing its efficacious use.” Dkt. No. 1357, *66th Report*, at 10 (Feb. 17, 2020).

14 As noted above, the Department’s new risk management system, VISION, is
15 online. There have been disappointing delays, though, in developing a key tool,
16 dashboards. Part of the reason for this is that the City’s vendor was unable for some
17 time to enter a further contract needed to complete the project because the vendor was
18 being acquired by another company. The City is devoting substantial resources to
19 thoughtfully building the system, acculturating its supervisors on what to get out of it,
20 and training its officers on how to use it.

21 The Department intends to make the most of its investment. This means using
22 the data to reduce disparities and to avoid other harms to the community and its
23 relationship with the Department.

24 In its most recent report, the IMT noted that the Department’s risk
25 management process has come a long way and that commanders have a handle on
26 supervising officers:

1 We are drawn to make this point again by our continuing
 2 observations of the Department's Risk Management
 3 Meetings. At these meetings, both Area Captains and their
 4 lieutenants continue to demonstrate knowledge of their
 5 officers and the Areas they oversee. We have also seen
 6 supervisors, on their own, initiating monitoring and
 7 intervention when they feel it is needed – rather than waiting
 8 on the PAS Unit, as in the past.

9 *Id.* at 9.

10 But the IMT is now concerned that the Department may look so closely at
 11 individuals that it may be losing sight of the bigger picture:

12 OPD's usual process is to count risk-related behaviors such as
 13 uses of force, stops, and complaints received – and then to use
 14 the counts to drill down from Area to squad to individual
 15 officer levels. But arguably, attributing these details only to
 16 individuals can mask trends and patterns that are important
 17 to understanding and ultimately to changing the
 18 Department. The near total omission of race from the
 19 discussion should not be seen as an oversight, or as failure to
 20 recognize wayward behavior in individuals. It should instead
 21 be considered a failure to recognize that trends and patterns
 22 in behavior go beyond individuals and, therefore, require
 23 analysis and remediation that by necessity must go beyond
 24 individuals.

25 *Id.* at 9.

26 Over the years, in contrast, the need to "drill down" on individual officers was a
 27 drumbeat point of criticism in the IMT's reports. Here is an example:

28 [D]espite repeated recommendations to do so, OPD continued
 29 to resist conducting a drill-down or in-depth analyses of squad
 30 or specific individual officer data to ascertain the basis for
 31 and/or to appropriately address such indicators when present.
 32 Rather, the discussion instead generally focuses on
 33 operational elements, including strengths and shortcomings
 34 of the OPD intelligence-led policing model, which we
 35 acknowledge are also important.

36 Dkt. No. 1219, *57th Report*, at 8 (Nov. 2, 2018).

37 The Department understands that it must look at individuals without losing
 38 sight of the larger landscape. The Department is looking at individuals and patterns

1 at each risk management meeting. At each one, the Department reviews data for
 2 *individuals, squads, areas, and the City as a whole*. The Department never digs into
 3 data for only one or some of those categories.

4 The IMT suggests writing out a plan for risk management meetings. Dkt. No.
 5 1357, *66th Report*, at 10 (Feb. 17, 2020). The Department thinks this is a good idea
 6 and requests that the IMT provide an example it has designed or reviewed in the past.
 7

8 **TASK 45—CONSISTENCY OF DISCIPLINE POLICY**

9 Since the last CMC, the IMT assessed Task 45 once. Dkt. No. 1357, at 12-14,
 10 *66th Report* (Feb. 17, 2020). As in the prior two reviews, the IMT found the
 11 Department is doing what the task requires: documenting and maintaining an
 12 adequate system for tracking discipline and corrective action; consistently imposing
 13 discipline; and appropriately training *Skelly* officers. *Id.* In addition, the City has
 14 implemented all of the Court Investigator's recommendations stemming from IA No.
 15 15-0771. *See* Dkt. No. 1240, at 25-26, *JCMS* (March 22, 2019).

16 Without explanation, however, the IMT again found the City in only partial
 17 compliance. Dkt. No. 1357, at 12-14, *66th Report* (Feb. 17, 2020).

18 In its last two statements, the City sought guidance on what steps are needed to
 19 achieve full compliance. The City respectfully renews that request.
 20

21 **VEHICLE PURSUITS**

22 The OIG recently studied and reported on vehicle pursuits. The OIG reports
 23 that the Department's Safety Committee found that 101 of the 104 pursuits in 2018
 24 complied with policy. The OIG found that the Department's process for reviewing
 25 pursuits identifies and appropriately handles most issues.

26 The OIG made the following recommendations, which the Department is
 27 adopting:
 28

- The Department should closely monitor the pursuit activity of officers who have high pursuit numbers and help those officers manage risk.
- The Department should assess the risks and benefits of pursuing vehicles tied to strong-arm robberies by minors.
- The Department should update its policies to ensure its pursuit review policy aligns with its pursuit policy.
- The Department should assess which teams should respond to collisions.
- The Department should look to increase its air support.
- The Department should explore technologies, such as StarChase, that mitigate pursuit risks.
- The Department should provide more pursuit data to supervisors.

Please see Ex. B, Combined Quarterly Report, and Ex. D, Response.

CONCLUSION

The City appreciates the Court's time and guidance and looks forward to further discussing the foregoing issues at the CMC.

OPOA'S STATEMENT

Since the inception of the Negotiated Settlement Agreement ("NSA") nearly 20 years ago, the Oakland Police Officers Association ("OPOA" & "Association") has consistently demonstrated its unequivocal commitment to further the goals and purposes of the NSA. The record in these proceedings is devoid of evidence that the OPOA has been an impediment of any type toward the implementation and compliance with the terms of the NSA. To the contrary, the record reflects that the OPOA, through its leadership has furthered efforts to secure compliance and cultural change in the Department.

The men and women who lead the OPOA reflect the diversity of rank, experience, gender, race and ethnicity of their sworn members of the Oakland Police Department (“OPD”). The filings, assertions and representations of the OPOA in these proceedings reflects a constant insistence of zero tolerance for prejudice, bias and disparate treatment of members of the Oakland community. Those same sentiments and lack of tolerance also apply when the OPOA advocates for its members where there may be discrimination against a member by OPD or the City of Oakland (“City”). For the most part, the formal and informal efforts undertaken by the OPOA to eradicate discrimination and bias unfortunately are not usually reflected in Departmental reporting, media accounts or filings in these proceedings.

The diverse leaders of the OPOA collectively have many decades of personal experience at OPD and regularly interact with the hundreds of men and women who are sworn to protect the public in the City of Oakland. The individual members of the OPOA leadership can attest to the cultural change in the Department since the inception of the NSA in 2003. The cultural change has occurred through promulgation of NSA driven policies, procedures and practices that have been overwhelmingly embraced by the sworn members of OPD.

1 While the OPOA in these proceedings has been limited to intervener status, the
2 Association has a keen and vested interest in assisting efforts to identify and resolve
3 challenges that come to the attention of this Court through various resources. The
4 OPOA is familiar with the confidential draft “Oakland Police Department, Police
5 Discipline Disparity Study” (“Study”) issued February 6, 2020 issued by Hillard
6 Heintze. The OPOA continues to be supportive of the effort to conduct an analysis of
7 the Department’s disciplinary process vis-à-vis disparities in investigations and
8 discipline. In that regard, while the draft Study notes challenges and deficiencies, it is
9 apparent that there has been substantive progress in identifying structural problems
10 which may have caused disparities in investigative findings and ultimate discipline of
11 members. The OPOA views the Study as an additional tool for OPD to engage in self-
12 review and improvement. The OPOA will continue to support all efforts to eradicate
13 perceived and actual bias and looks forward to the issuance of the final report with
14 recommendations.

15 The 66th Report of the Independent Monitor (“Report”) dated February 17,
16 provides an interesting perspective into the issue of risk analysis and the role of race.
17 While the OPOA is not a regular participant in the risk management meetings
18 referenced in the IMT discussion of Task 41, the Report confirms that the
19 Department’s continued development of monitoring and self-reporting has provided
20 invaluable tools and insights to enhance what are already benchmark police
21 department practices. The NSA developed tools of oversight and accountability have
22 prepared OPD to reach full compliance.

23 While the OPOA, and its leadership, continue to push toward NSA compliance,
24 the OPOA wants the Court to be aware of the fact that the external factors, well
25 beyond the control of the OPOA, have continued to put enormous pressure on the men
26 and women charged with protecting the safety of Oakland citizens. Despite the fact
27 that crime increased in 2019 in nearly every category, for the first time in five years
28

1 the current staffing levels have dropped. There are less police officers to fight more
 2 crime.

3 The primary purpose of the Oakland Police Department and its sworn members
 4 is to protect the citizens of Oakland. OPD has done an exceptional job in fighting and
 5 preventing crime in the community especially considering its limited resources. While
 6 the primary mission of OPD is to fight crime, it has most notably, become the most
 7 progressive, transparent and accountable police department in the State of California.
 8 The leadership of the OPOA have routine communications with law-enforcement labor
 9 leaders throughout the State. Based on anecdotal evidence provided to OPOA leaders,
 10 it is apparent that the policies, procedures, oversight and accountability at OPD
 11 exceed those of any other major city police department. The OPOA would urge the
 12 Parties to commission a study to compare and contrast the nature of constitutional
 13 policing efforts at OPD and other cities across the State, or perhaps the nation. The
 14 OPOA is confident that such an effort would be instructive to the Court.

15 OPD continues to distinguish itself by producing quality commanders and police
 16 officers. While a distinct few may stray from the mission and goals of the Police
 17 Department, many others such as former Deputy Chief Danielle Outlaw and former
 18 Police Captain Sekou Millington have very recently gone on to other police
 19 departments where their leadership, skill and professionalism will serve other
 20 communities. In that regard, Danielle Outlaw was recently named the Police
 21 Commissioner for the City of Philadelphia where she oversees America's fourth largest
 22 police force with over 6,500 police officers. Sekou Millington was recently hired as the
 23 Chief of Police in Tracy, California. Finally, while there are countless examples of rank
 24 and file members serving the community without notoriety, a rookie police officer was
 25 recently distinguished by receiving the prestigious Jefferson Award for public service
 26 to the community by counseling and mentoring young children of incarcerated
 27
 28

1 parents. These are but a few examples of the quality of the men and women who serve
2 in the Oakland Police Department.

3 Finally, the OPOA wishes to convey to the Court its strongest desire that the
4 men and women who serve at the Oakland Police Department be acknowledged for the
5 excellent work, progress and efforts undertaken to afford the citizens of Oakland a
6 safe community. The efforts undertaken by these men and women have not been
7 exclusive of their significant accomplishments in changing the culture and reforming
8 the Oakland Police Department.

9

10 Respectfully submitted,

11

Dated: February 18, 2020 BARBARA J. PARKER, City Attorney
12 DAVID A. PEREDA, Special Counsel

13

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26 *Per Local Rule 5-1(i)(3), the filer attests that concurrence in the filing of the
27 document has been obtained from each of the other Signatories.

28

JOINT CASE MANAGEMENT STATEMENT (C 00-04599 WHO)